Supreme Court, U.S.
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No. 05-1412 MAY 4 - 2006

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In The

Supreme Court of the United States

MESBA KEDER MOSSA,

Petitioner,

vs.

ALBERTO GONZALES, Attorney General of the United States,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether non-immediate relatives and family strangers could be found to be protected persons under Section 237(a)(2) of the Immigration and Nationality Act, herein referred to as the Act, 8 U.S.C. §1227(a)(2) for which their being a victim in a battery by an alien will subject the alien to removal from this country.

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Non-immediate relatives and family strangers are not protected persons under Section 237(a)(2) of the Immigration and Nationality Act, herein referred to as the Act, 8 U.S.C. §1227(a)(2) for which their being a victim in a battery by an alien will not subject the alien to removal from this country 7

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the opinion of the United States Circuit Court of Appeals for the Eighth Circuit affirming the judgements of the Immigration Judge and Board of Immigration Appeals as it improperly and without authority expands the legislation enacted by Congress, more specifically, Section 237(a)(2) of the Immigration and Nationality Act, herein referred to as the Act, 8 U.S.C. §1227(a)(2) finding that non-immediate relatives and family strangers are protected persons within the meaning of Section 237(a)(2) of the Act.

OPINIONS BELOW

The decision of the Immigration Judge initially appealed to the Board of Immigration Appeals is attached at App. 3-19. The decision of the Board of Immigration Appeals from which Petitioner filed his Petition for Review before the Circuit Court for the Eighth Circuit is attached at App. 20-21.

The opinion of the United States Circuit Court for the Eighth Circuit was not selected for publication in the Federal Reporter. It can however be found at 160 Fed. Appx. 554, 2005 WL 3536119, C.A.8 Dec. 28, 2005. It is here attached at App. 1-2. The order of Circuit Court of February 16, 2006 denying Petitioner's Petition for Rehearing from which this petition is filed to this Court is attached at App. 22.

JURISDICTIONAL STATEMENT

This petition seeks review of the decision of the Court of Appeals for the Eighth Circuit three judge decision entered on December 28, 2005. (App. 1-2). On February 16, 2006, the three judge panel denied Petitioner's Motion for Rehearing. (App. 22). This petition has been filed with ninety (90) days after the rendering of the final judgement in this case. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

On June 11, 2001, the date of Petitioner's first conviction, which was under Section K.S.A. 21-3412 (2000), the applicable State of Kansas criminal law read as follows:

> "(a) Battery is:
>
> (1) Intentionally or recklessly causing bodily harm to another person; or
>
> (2) intentionally causing physical contact with another person when done in a rude, insulting or angry manner.
>
> (b) Except as provided in subsection (c), battery is a class B misdemeanor.
>
> (c)(1) Upon a first conviction of a violation of this section under circumstances which constitute a domestic battery, a person shall be guilty of a class B person misdemeanor and sentence to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than $2000, nor more than $500 or in the court's discretion the court may enter an order which

> requires the person enroll in and successfully complete a domestic violence prevention program. . . ."

That statute was amended on July 1, 2001 and section (c) was severed from K.S.A. §21-3412 (2000) and attached to a domestic battery statute. See Kansas 2001 Session Laws, Chapter 177, §6. On September 28, 2001, the date of Petitioner's second misdemeanor conviction, relevant provisions of that law read as follows:

> "(a) Domestic battery is:
>
> (1) intentionally or recklessly causing bodily harm by a family or household member against a family or household member; or
>
> (2) intentionally causing physical contact with a family or household member by a family or household member when done in a rude, insulting or angry manner.
>
> (b)(1) Upon a first conviction of a violation of domestic battery, a person shall be guilty of a class B person misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than $200, nor more than $500 or in the court's discretion the court may enter an order which requires the person enroll in and successfully complete a domestic violence prevention program.
>
> (2) If, within five years immediately preceding commission of the crime, a person is convicted of a violation of domestic battery a second time, such person shall be guilty of a class A person misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment

and fined not less than $500 nor more than $1000. . . .

(c) As used in this section:

(1) Family or household member means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time;. . . . "

Pertinent provisions of Section 237(a)(2) of the Immigration and Nationality Act, herein referred to as the Act, 8 U.S.C. §1227(a)(2) are as follows:

"(E) – Crimes of domestic violence, stalking, or violation of protection order, crimes against children

(i) – Domestic violence, stalking, and child abuse

Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term "crime of domestic violence" means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has

cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.

(ii) – Violators of protection orders

Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term "protection order" means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding."

STATEMENT OF THE CASE

Petitioner is a native and citizen of Ethiopia who was admitted to this country in October 1999 as a lawful permanent resident. In June 2001, he was sentenced to nine months imprisonment pursuant to a conviction under Kansas Statutes 21-3412 for a battery upon Nesru Seman.

In September 2001, he was sentenced to three months imprisonment pursuant to a conviction under Kansas 2001 Session Laws, Chapter 177, §5, for a battery on Abou Seman Mossa.

In January 2002, the Immigration and Naturalization Service issued a Notice to Appear charging Petitioner with being removable from this country because he had been convicted of a crime of domestic violence. Mossa filed a motion to terminate, arguing that these convictions were not crimes of domestic violence, one of which primary reason was that neither of the victims were protected persons under the provisions of Section 237(a)(2) of the Act, 8 U.S.C. §1227(a)(2), more specifically,

> "current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs,. . . . "

The Immigration Judge on December 12, 2003, found the issues against Petitioner, held that he was removable as charged and ordered him removed to Ethiopia. (App. 3-19). Petitioner appealed this order to the Board of Immigration Appeals, which adopted the Immigration Judge's decision in a February 28, 2005 decision. (App. 20-21). Petitioner Mossa's Petition for Review was denied by a three judge panel of the Court of Appeals for the Eighth Circuit on December 28, 2005 (App. 1-2) and on February 16, 2006, the court denied Petitioner's Motion for Rehearing. (App. 22).